

109TH CONGRESS
1ST SESSION

H. R. 4540

To amend the Public Health Service Act and Employee Retirement Income Security Act of 1974 to require that group and individual health insurance coverage and group health plans provide coverage for annual screening mammography for women 40 years of age or older if the coverage or plans include coverage for diagnostic mammography.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 14, 2005

Mr. NADLER (for himself, Mr. WYNN, Mr. OWENS, Mr. VAN HOLLEN, Mr. RANGEL, Mr. HINOJOSA, Mr. HOLDEN, Ms. JACKSON-LEE of Texas, Ms. KAPTUR, Ms. MILLENDER-MCDONALD, Mr. HINCHEY, Mr. SHERMAN, Mr. MICHAUD, Ms. HERSETH, Ms. CARSON, Mr. PALLONE, Mr. GRIJALVA, Mr. MCINTYRE, Mr. McDERMOTT, Mr. KUCINICH, Ms. SOLIS, Ms. NORTON, Mr. GUTIERREZ, Mr. BOUCHER, Mr. ACKERMAN, Mr. SCOTT of Georgia, Mr. FRANK of Massachusetts, Mr. PAYNE, Mr. CLEAVER, Mrs. CHRISTENSEN, Mr. CONYERS, Mr. CROWLEY, Mr. HONDA, Mr. RYAN of Ohio, Ms. ROS-LEHTINEN, Mr. STARK, Ms. MATSUI, Mr. TOWNS, Mr. LYNCH, Mr. McNULTY, Mr. LANTOS, Mr. WEINER, Mr. KILDEE, Ms. WOOLSEY, Mr. LANGEVIN, and Mr. MEEHAN) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Public Health Service Act and Employee Retirement Income Security Act of 1974 to require that group and individual health insurance coverage and group health plans provide coverage for annual screening mammography for women 40 years of age or older if

the coverage or plans include coverage for diagnostic mammography.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; FINDINGS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Mammogram Availability Act of 2005”.

6 (b) FINDINGS.—Congress finds the following:

7 (1) An estimated 211,000 women will have been
8 diagnosed with breast cancer and an estimated
9 40,000 women will have died from breast cancer
10 during 2005.

11 (2) Breast cancer is the second leading cause of
12 death for women in the United States and is the
13 leading cause of death for women between the ages
14 of 40 and 49 in the United States.

15 (3) Breast cancer death rates were reduced by
16 24 percent from 1990 to 2000.

17 (4) A study sponsored by the National Cancer
18 Institute and published on October 27, 2005, con-
19 cluded that up to 65 percent of the reduction in the
20 number of breast cancer deaths was directly attrib-
21 utable to screening mammography.

22 (5) An expert panel convened by the National
23 Institutes of Health’s National Cancer Institute rec-
24 ommended on February 21, 2002, that women be-

1 tween the ages of 40 and 49 should be screened
2 every one to two years with mammography.

3 (6) The American Cancer Society recommends
4 that women over the age of 40 receive an annual
5 mammogram.

6 **SEC. 2. COVERAGE OF ANNUAL SCREENING MAMMOG-**
7 **RAPHY UNDER GROUP HEALTH PLANS.**

8 (a) PUBLIC HEALTH SERVICE ACT AMENDMENTS.—

9 (1) Subpart 2 of part A of title XXVII of the
10 Public Health Service Act is amended by adding at
11 the end the following new section:

12 **“SEC. 2707. STANDARDS RELATING TO BENEFITS FOR**
13 **SCREENING MAMMOGRAPHY.**

14 “(a) REQUIREMENTS FOR COVERAGE OF ANNUAL
15 SCREENING MAMMOGRAPHY.—

16 “(1) IN GENERAL.—A group health plan, and a
17 health insurance issuer offering group health insur-
18 ance coverage, that provides coverage for diagnostic
19 mammography for any woman who is 40 years of
20 age or older shall provide coverage for annual
21 screening mammography for such a woman under
22 terms and conditions that are not less favorable than
23 the terms and conditions for coverage of diagnostic
24 mammography.

1 “(2) DIAGNOSTIC AND SCREENING MAMMOG-
2 RAPHY DEFINED.—For purposes of this section—

3 “(A) The term ‘diagnostic mammography’
4 means a radiologic procedure that is medically
5 necessary for the purpose of diagnosing breast
6 cancer and includes a physician’s interpretation
7 of the results of the procedure.

8 “(B) The term ‘screening mammography’
9 means a radiologic procedure provided to a
10 woman for the purpose of early detection of
11 breast cancer and includes a physician’s inter-
12 pretation of the results of the procedure.

13 “(b) PROTECTIONS.—A group health plan, and a
14 health insurance issuer offering group health insurance
15 coverage in connection with a group health plan, may
16 not—

17 “(1) deny coverage for annual screening mam-
18 mography on the basis that the coverage is not
19 medically necessary or on the basis that the screen-
20 ing mammography is not pursuant to a referral, con-
21 sent, or recommendation by any health care pro-
22 vider;

23 “(2) deny to a woman eligibility, or continued
24 eligibility, to enroll or to renew coverage under the

1 terms of the plan, solely for the purpose of avoiding
2 the requirements of this section;

3 “(3) provide monetary payments or rebates to
4 women to encourage such women to accept less than
5 the minimum protections available under this sec-
6 tion;

7 “(4) penalize or otherwise reduce or limit the
8 reimbursement of an attending provider because
9 such provider provided care to an individual partici-
10 pant or beneficiary in accordance with this section;
11 or

12 “(5) provide incentives (monetary or otherwise)
13 to an attending provider to induce such provider to
14 provide care to an individual participant or bene-
15 ficiary in a manner inconsistent with this section.

16 “(c) RULES OF CONSTRUCTION.—

17 “(1) Nothing in this section shall be construed
18 to require a woman who is a participant or bene-
19 ficiary to undergo annual screening mammography.

20 “(2) This section shall not apply with respect to
21 any group health plan, or any group health insur-
22 ance coverage offered by a health insurance issuer,
23 which does not provide benefits for diagnostic mam-
24 mography.

1 “(3) Nothing in this section shall be construed
2 as preventing a group health plan or issuer from im-
3 posing deductibles, coinsurance, or other cost-shar-
4 ing in relation to benefits for screening mammog-
5 raphy under the plan (or under health insurance
6 coverage offered in connection with a group health
7 plan), except that such coinsurance or other cost-
8 sharing for any portion may not be greater than
9 such coinsurance or cost-sharing that is otherwise
10 applicable with respect to benefits for diagnostic
11 mammography.

12 “(4) Women between the ages of 40 and 49
13 should (but are not required to) consult with appro-
14 priate health care practitioners before undergoing
15 screening mammography, but nothing in this section
16 shall be construed as requiring the approval of a
17 health care practitioner before a woman undergoes
18 an annual screening mammography.

19 “(d) NOTICE.—A group health plan under this part
20 shall comply with the notice requirement under section
21 714(d) of the Employee Retirement Income Security Act
22 of 1974 with respect to the requirements of this section
23 as if such section applied to such plan.

24 “(e) LEVEL AND TYPE OF REIMBURSEMENTS.—
25 Nothing in this section shall be construed to prevent a

1 group health plan or a health insurance issuer offering
 2 group health insurance coverage from negotiating the level
 3 and type of reimbursement with a provider for care pro-
 4 vided in accordance with this section.

5 “(f) PREEMPTION; EXCEPTION FOR HEALTH INSUR-
 6 ANCE COVERAGE IN CERTAIN STATES.—

7 “(1) IN GENERAL.—The requirements of this
 8 section shall not apply with respect to health insur-
 9 ance coverage if there is a State law (as defined in
 10 section 2723(d)(1)) for a State that regulates such
 11 coverage, that requires coverage to be provided for
 12 annual screening mammography for women who are
 13 40 years of age or older and that provides at least
 14 the protections described in subsection (b).

15 “(2) CONSTRUCTION.—Section 2723(a)(1) shall
 16 not be construed as superseding a State law de-
 17 scribed in paragraph (1).”.

18 (2) Section 2723(c) of such Act (42 U.S.C.
 19 300gg–23(c)) is amended by striking “section 2704”
 20 and inserting “sections 2704 and 2707”.

21 (b) ERISA AMENDMENTS.—

22 (1) Subpart B of part 7 of subtitle B of title
 23 I of the Employee Retirement Income Security Act
 24 of 1974 is amended by adding at the end the fol-
 25 lowing new section:

1 **“SEC. 714. STANDARDS RELATING TO BENEFITS FOR**
2 **SCREENING MAMMOGRAPHY.**

3 “(a) REQUIREMENTS FOR COVERAGE OF ANNUAL
4 SCREENING MAMMOGRAPHY.—

5 “(1) IN GENERAL.—A group health plan, and a
6 health insurance issuer offering group health insur-
7 ance coverage, that provides coverage for diagnostic
8 mammography for any woman who is 40 years of
9 age or older shall provide coverage for annual
10 screening mammography for such a woman under
11 terms and conditions that are not less favorable than
12 the terms and conditions for coverage of diagnostic
13 mammography.

14 “(2) DIAGNOSTIC AND SCREENING MAMMOG-
15 RAPHY DEFINED.—For purposes of this section—

16 “(A) The term ‘diagnostic mammography’
17 means a radiologic procedure that is medically
18 necessary for the purpose of diagnosing breast
19 cancer and includes a physician’s interpretation
20 of the results of the procedure.

21 “(B) The term ‘screening mammography’
22 means a radiologic procedure provided to a
23 woman for the purpose of early detection of
24 breast cancer and includes a physician’s inter-
25 pretation of the results of the procedure.

1 “(b) PROTECTIONS.—A group health plan, and a
2 health insurance issuer offering group health insurance
3 coverage in connection with a group health plan, may
4 not—

5 “(1) deny coverage described in subsection
6 (a)(1) on the basis that the coverage is not medically
7 necessary or on the basis that the screening mam-
8 mography is not pursuant to a referral, consent, or
9 recommendation by any health care provider;

10 “(2) deny to a woman eligibility, or continued
11 eligibility, to enroll or to renew coverage under the
12 terms of the plan, solely for the purpose of avoiding
13 the requirements of this section;

14 “(3) provide monetary payments or rebates to
15 women to encourage such women to accept less than
16 the minimum protections available under this sec-
17 tion;

18 “(4) penalize or otherwise reduce or limit the
19 reimbursement of an attending provider because
20 such provider provided care to an individual partici-
21 pant or beneficiary in accordance with this section;
22 or

23 “(5) provide incentives (monetary or otherwise)
24 to an attending provider to induce such provider to

1 provide care to an individual participant or bene-
2 ficiary in a manner inconsistent with this section.

3 “(c) RULES OF CONSTRUCTION.—

4 “(1) Nothing in this section shall be construed
5 to require a woman who is a participant or bene-
6 ficiary to undergo annual screening mammography.

7 “(2) This section shall not apply with respect to
8 any group health plan, or any group health insur-
9 ance coverage offered by a health insurance issuer,
10 which does not provide benefits for diagnostic mam-
11 mography.

12 “(3) Nothing in this section shall be construed
13 as preventing a group health plan or issuer from im-
14 posing deductibles, coinsurance, or other cost-shar-
15 ing in relation to benefits for screening mammog-
16 raphy under the plan (or under health insurance
17 coverage offered in connection with a group health
18 plan), except that such coinsurance or other cost-
19 sharing for any portion may not be greater than
20 such coinsurance or cost-sharing that is otherwise
21 applicable with respect to benefits for diagnostic
22 mammography.

23 “(4) Women between the ages of 40 and 49
24 should (but are not required to) consult with appro-
25 priate health care practitioners before undergoing

1 screening mammography, but nothing in this section
2 shall be construed as requiring the approval of a
3 health care practitioner before a woman undergoes
4 an annual screening mammography.

5 “(d) NOTICE UNDER GROUP HEALTH PLAN.—The
6 imposition of the requirements of this section shall be
7 treated as a material modification in the terms of the sum-
8 mary plan described in section 102(a), for purposes of as-
9 suring notice of such requirements under the plan; except
10 that the summary description required to be provided
11 under the last sentence of section 104(b)(1) with respect
12 to such modification shall be provided by not later than
13 60 days after the first day of the first plan year in which
14 such requirements apply.

15 “(e) LEVEL AND TYPE OF REIMBURSEMENTS.—
16 Nothing in this section shall be construed to prevent a
17 group health plan or a health insurance issuer offering
18 group health insurance coverage from negotiating the level
19 and type of reimbursement with a provider for care pro-
20 vided in accordance with this section.

21 “(f) PREEMPTION; EXCEPTION FOR HEALTH INSUR-
22 ANCE COVERAGE IN CERTAIN STATES.—

23 “(1) IN GENERAL.—The requirements of this
24 section shall not apply with respect to health insur-
25 ance coverage if there is a State law (as defined in

1 section 731(d)(1)) for a State that regulates such
2 coverage, that requires coverage to be provided for
3 annual screening mammography for women who are
4 40 years of age or older, and that provides at least
5 the protections described in subsection (b).

6 “(2) CONSTRUCTION.—Section 731(a)(1) shall
7 not be construed as superseding a State law de-
8 scribed in paragraph (1).”.

9 (2) Section 731(c) of such Act (29 U.S.C.
10 1191(c)) is amended by striking “section 711” and
11 inserting “sections 711 and 714”.

12 (3) Section 732(a) of such Act (29 U.S.C.
13 1191a(a)) is amended by striking “section 711” and
14 inserting “sections 711 and 714”.

15 (4) The table of contents in section 1 of such
16 Act is amended by inserting after the item relating
17 to section 713 the following new item:

“Sec. 714. Standards relating to benefits for screening mammography.”.

18 (c) EFFECTIVE DATES.—(1) Subject to paragraph
19 (2), the amendments made by this section shall apply with
20 respect to group health plans (and health insurance cov-
21 erage offered in connection with group health plans) for
22 plan years beginning on or after 1 year after the date of
23 the enactment of this Act.

24 (2)(A) In the case of a group health plan maintained
25 pursuant to 1 or more collective bargaining agreements

1 between employee representatives and 1 or more employ-
 2 ers ratified before the date of the enactment of this Act,
 3 the amendments made by this section shall not apply to
 4 plan years beginning before the later of—

5 (i) the date on which the last collective
 6 bargaining agreements relating to the plan ter-
 7 minates (determined without regard to any ex-
 8 tension thereof agreed to after the date of the
 9 enactment of this Act); or

10 (ii) 1 year after the date of the enactment
 11 of this Act.

12 (B) For purposes of subparagraph (A)(i), any plan
 13 amendment made pursuant to a collective bargaining
 14 agreement relating to the plan which amends the plan
 15 solely to conform to any requirement added by this section
 16 shall not be treated as a termination of such collective bar-
 17 gaining agreement.

18 **SEC. 3. COVERAGE OF ANNUAL SCREENING MAMMOG-**
 19 **RAPHY UNDER INDIVIDUAL HEALTH COV-**
 20 **ERAGE.**

21 (a) IN GENERAL.—Part B of title XXVII of the Pub-
 22 lic Health Service Act is amended by inserting after sec-
 23 tion 2752 the following new section:

1 **“SEC. 2753. STANDARDS RELATING TO BENEFITS FOR**
2 **SCREENING MAMMOGRAPHY.**

3 “(a) IN GENERAL.—The provisions of section 2707
4 (other than subsections (d) and (f)) shall apply to health
5 insurance coverage offered by a health insurance issuer
6 in the individual market in the same manner as it applies
7 to health insurance coverage offered by a health insurance
8 issuer in connection with a group health plan in the small
9 or large group market.

10 “(b) NOTICE.—A health insurance issuer under this
11 part shall comply with the notice requirement under sec-
12 tion 714(d) of the Employee Retirement Income Security
13 Act of 1974 with respect to the requirements referred to
14 in subsection (a) as if such section applied to such issuer
15 and such issuer were a group health plan.

16 “(c) PREEMPTION; EXCEPTION FOR HEALTH INSUR-
17 ANCE COVERAGE IN CERTAIN STATES.—

18 “(1) IN GENERAL.—The requirements of this
19 section shall not apply with respect to health insur-
20 ance coverage if there is a State law (as defined in
21 section 2723(d)(1)) for a State that regulates such
22 coverage, that requires coverage in the individual
23 health insurance market to be provided for annual
24 screening mammography for women who are 40
25 years of age or older and that provides at least the

1 protections described in section 2707(b) (as applied
2 under subsection (a)).

3 “(2) CONSTRUCTION.—Section 2762(a) shall
4 not be construed as superseding a State law de-
5 scribed in paragraph (1).”.

6 (b) CONFORMING AMENDMENT.—Section 2762(b)(2)
7 of such Act (42 U.S.C. 300gg-63(b)(2)) is amended by
8 striking “section 2751” and inserting “sections 2751 and
9 2753”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply with respect to health insurance
12 coverage offered, sold, issued, or renewed in the individual
13 market on or after the date that is 1 year after the date
14 of the enactment of this Act.

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